

MEMORANDUM

TO: Jennifer Berkey
FROM: Dave Tuthill
DATE: March 23, 2004
RE: Discussion of Basin 34 Water Delivery Issues

The purpose of this memorandum is to document the results of discussions of Basin 34 water delivery issues conducted in our offices on March 15 and March 22, 2004. In the discussions three questions were posed, and responses to these questions are addressed in turn below:

1. Can the storage water rights at Mackay Reservoir make a priority call on upstream water rights?

Basin 34 General Provision No. 6 states in part "The following surface water rights from the Big Lost River and its tributaries upstream of Mackay Reservoir shall be administered separately from all other **non-storage**, surface water rights from the Big Lost River downstream of Mackay reservoir during two periods of time as follows..." (emphasis added). The inclusion of the term "non-storage" clarifies that the remaining language in General Provision No. 6, which identifies times of separated administration, does not pertain to the storage water rights in Mackay Reservoir. In addition, the listing of water rights upstream from Mackay Reservoir, Attachment B to the General Provisions, does not include the storage water rights in Mackay Reservoir. Accordingly, the answer to question No. 1 is yes.

2. Is the inflow to Mackay Reservoir subject to delivery calls downstream during periods of separate administration?

Yes, in general the inflow to Mackay Reservoir is subject to delivery calls downstream during periods of separate administration. However, downstream rights cannot call water made available by the Mackay Reservoir storage water rights' priority calls. Further explanation of this concept follows.

General Provision No. 6 establishes periods during which natural flow diversions downstream from Mackay Reservoir cannot call on the water upstream from the reservoir. During these periods, inflow to Mackay Reservoir can only be delivered as natural flow to water rights downstream from Mackay Reservoir. However, if Mackay Reservoir's storage water rights have not been filled, Mackay Reservoir can make a call on upstream users to fulfill these rights resulting in curtailment, on a priority basis, of diversions upstream from the reservoir as in question No. 1 above. To the extent that such a curtailment results in an increase in the inflow to Mackay Reservoir, that inflow increase is not subject to a call from downstream users.

As an example, assume the inflow to Mackay Reservoir is 90 cfs. Assume that 10 cfs of this inflow results from curtailment of upstream diversions to provide water for the filling of the Mackay Reservoir storage water rights. Then 80 cfs would be allocated to water rights downstream from Mackay Reservoir, and 10 cfs would be allocated to fill the storage water right. The watermaster, in consultation with IDWR, determines the flows available to fill natural flow rights and storage rights.

3. What is the effect of IDAPA Rule No. 37.03.12.040.02(d)(iii), which states as follows:

If natural flow can not be delivered to a point of diversion at the beginning of the irrigation season and the watermaster determines rotation credit is needed to make possible the delivery of water rights being called for, and there is room in Mackay Reservoir for rotation credit, the watermaster may rotate natural flow rights, which would not otherwise be deliverable to their point of diversion, for credit up to a combined total of three thousand five hundred (3,500) AF to be released from the reservoir under the control of the watermaster to make natural flow rights deliverable to their point of diversion. The watermaster may use storage water to assist the delivery of natural flow water rights at the beginning of the irrigation season when requested to do so by the storage holder.

The Administrative Rules governing Basin 34 are still in effect, to the extent they do not conflict with the General Provisions. This particular rule does not conflict with the General provisions and thus is still in effect.

Basin 34 General Provision No. 3 provides that rotation into storage can occur only during certain times. Rotations into storage under the provisions of this rule are voluntary, at the discretion of the holders of water rights in priority. At the beginning of the irrigation season, when General Provision 6a is in effect, up to 3500 AF may be allowed to be rotated into storage at the request of the water right holders, and released for the purpose of charging the system, prior to any futile call determination downstream from Mackay Reservoir.